No. 12511

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, *et al.*,

Appellants,

vs.

MALLONEE, *et al.*, SHAREHOLDERS PROTECTIVE COMMITTEE OF LONG BEACH ASSOCIATION, LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COMPANY, *et al.*,

Appellees.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FAHEY *et al.*,

Appellants,

vs.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*,

Appellees.

BRIEF OF APPELLEE, TITLE SERVICE COMPANY.

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PRELIMINARY STATEMENT.

Because of the volume of the 11,000 page printed record, which discloses a part only of the five years of this litigation through the U. S. Supreme Court, Ninth Circuit Court of Appeals, several U. S. District Courts, Califor-

nia State Superior Court, and Congressional Investigations, this appellee, Title Service Company, and other appellees have joined in consolidating various portions of their briefs.

This appellee joins in portions of the brief of appellee Long Beach Federal Savings and Loan Association as to:

1. Description of the litigation;
2. Jurisdictional Statement;
3. Statement of the Case;
4. Scope of Review on Appeal from Preliminary Injunction;
5. The Court has Jurisdiction (entire Section);
6. Appellants are Not Immune from Suit;
7. There are No Indispensable Parties;
8. Findings of the Court are Conclusive;
9. Preliminary Injunction was Proper (entire Section);

This appellee's brief will contain sections with similar headings supplementing said matters so they particularly apply to this appellee only.

SUPPLEMENTARY STATEMENT OF THE CASE.

This appellee, Title Service Company, was (and is) trustee in several thousands of deeds of trust, with an aggregate value of approximately $12,000,000.00. [R. 47]. Each of said deeds of trust conveyed a separate parcel of real property (usually the home of the borrower) to this appellee as trustee, to secure the repayment of a loan made by appellee, Long Beach Association.

Appellee's duty as trustee was to reconvey the property to the owner upon payment in full to whomever was legally entitled to receive the balance due on the loan. Determination of who was entitled to receive the balance on the loan became a complicated legal problem upon appellant Ammann's seizure of appellee Long Beach Association, and assignment of said seized notes and deeds of trust to appellant San Francisco Bank, in consideration for payment to Ammann by San Francisco Bank of $7,300,000.00 of seized Los Angeles Bank assets. [R. 3708.]

Appellee Title Service Company became a party to this litigation when it was sued on May 27, 1946, by original plaintiffs Mallonee, *et al.,* Shareholders Protective Committee of appellee Long Beach Association. In its answer to such complaint, it filed its cross-claim in interpleader and in the nature of interpleader, pursuant to express statutory authority in Title 28, Section 41(26) U. S. C. A. (1946 version), now in Title 28, Sections 1335, 1397 and 2361. [R. 43-56.] By such interpleader, it deposited into the Registry of the Court below, $800,000.00 in face

value, of notes and deeds of trust, which conveyed legal title to this appellee as trustee on 174 separate homes.[1]

In addition, as such trustee, this appellee interplead into Court, the legal title to several thousand additional homes upon which it was trustee. The original notes and deeds of trust concerned had been seized by appellant Ammann as part of the assets of appellee Long Beach Association.

Appellee Title Service Company as trustee, sought instructions of the Court below as to how it could discharge its duties as trustee. [R. 54.] It could not comply with the request and demand for reconveyance of one party to the litigation, made in defiance of the stop orders and cross-demands of other parties; particularly in view of the fact that the notes bore assignments and cancellations of assignments, by rubber stamp, undated and unauthenticated, and, as to the cancellations, completely unsigned.

The only reconveyances by Title Service Company since being made a defendant in the litigation, have been made either:

(a) pursuant to order of Court and deposited with the Clerk of the Court, or

(b) pursuant to orders or judgments of the Court, quieting title in said appellee Association as beneficiary under said deeds of trust.

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[1]Reference is made to the entire section on "Interpleader Jurisdiction" in brief of appellee Long Beach Association, wherein the exact details of Title Service Company interpleader and fifty (50) supplementary interpleaders resulting therefrom, together with the findings of the Court in orders made thereon, are all set forth in complete detail. Reference is also made to the authorities and statutes on interpleader cited in said section of said brief.

Who among the litigants is entitled to receive payment of the $12,000,000.00 balance due on thousands of notes and deeds of trust is one of the many issues yet to be decided by the Court below. The litigants' claims to receive payment of the $12,000,000.00 of deeds of trust have been removed from the deeds of trust and the thousands of homes and placed upon the $14,000,000.00 in assets in the Registry of the Court. [R. 8526-8537.] Except for such removal and transfer of those claims, titles to the homes would yet be clouded and encumbered. As one of the principal interpleaders, this appellee, together with other appellees, has joined in seeking and obtaining from the Court below preliminary injunctions to prevent a multiplicity of litigation over these issues. [R. 7659-7676.] Such issues particularly apply to this appellee's duties as trustee.

Appellees Los Angeles Bank and appellants Portland Bank and San Francisco Bank, assert claims of ownership dependent upon and arising from, appellant Ammann's assignments and transfers of the thousands of notes. This appellee's homeowners desired to pay upon their loans on their homes, but required assurance that such payment was effective to discharge their debts and **particularly that such payment would result in insurable titles.**

Payment by the homeowners to any one of the claimant litigants to the exclusion of the others did not result in insurable title. Title companies were unwilling to insure in advance of final judgment, the probable outcome of litigation involving the constitutionality of Acts of Congress. One of the Congressional Acts was unanimously held unconstitutional by a statutory Three-Judge Court and unanimously held constitutional by the U. S. Supreme Court, neither of which decisions was conclusive or final

as to the eventual determination of ownership of the $12,000,000.00 to be paid under the deeds of trust.

This appellee took active part in conferences with title insurance companies' counsel and committees, and other counsel in the litigation, to evolve the process of deposit into the Registry of the Court of the total amount due upon the notes secured by the deeds of trust, together with reconveyances, requests for reconveyances, and deposit of the original note and deed of trust, for cancellation by the Clerk of the Court. As a result, titles, insurable by reputable title insurance companies were available to the homeowners throughout the litigation, including pendency of the appeals to the U. S. Supreme Court, writs, remands and other proceedings.

It was necessary however, for the distressed homeowners to obtain their own separate counsel and to intervene as parties in the litigation. [R. 8288-8293, Ftn. 15.] In many instances, appellant Ammann, well knowing he was unable to give an insurable title, had collected payment in full from the borrowers. Ammann sought to incite such borrowers against appellee Title Service Company because it, as trustee, refused to act without authority of the Court in which it was a defendant and into whose registry it had interplead the legal title.

The Court required appellant Ammann to deposit in Court, the amounts he had thus collected, upon which deposit, the borrowers finally obtained the release and reconveyance of their homes, which they believed had been released, when they paid appellant Ammann.

Appellee Title Service Company, by steadfastly observing the Court's instructions and orders for reconveyances, and declining to proceed without such Court orders, incurred the enmity of appellants and their allies. In

January of 1948, this appellee was sued among other defendants for $2,000,000.00 in damages by two of the 16,000 depositors in appellee Long Beach Association. The damages alleged were part of the claims of mismanagement made by appellants as part of the first seizure of Long Beach Association in May of 1946.

This appellee, as trustee, is vitally concerned in the attacks upon the jurisdiction of the Court below to clear the homeowners' titles by the deposit in Court.

QUESTIONS PRESENTED.

Several questions are presented insofar as Title Service Company, the trustee, appellee, is concerned:

1. Whether the appellants can attack the jurisdiction of the District Court several years after judgments in interpleader affecting the homeowners' titles have become final following dismissal of appeals from said judgments.

2. Whether the judgments in interpleader, whereby the thousands of homeowners received merchantable and insurable titles, are final and not subject to this appeal.

3. Whether the District Court has the power by injunction to protect its judgments whereby the titles of thousands of innocent homeowners have been made merchantable and insurable.

4. Whether appellants by an administrative hearing can interfere with the jurisdiction and final judgments of the District Court.

5. Whether Title Service Company, a California corporation, holding title as trustee to thousands of homes within the Southern California area, should submit the vital issue of title to those homes to an independent and impartial Federal Court or to an "administrative hearing" 3,000 miles away conducted by appellants themselves.

ARGUMENT.

I.

Jurisdiction of the District Court in Interpleader Was Decided Forever by Its Former Judgments.

Regardless of technicalities or niceties of dilatory pleas, as abused by appellants, there must somewhere and sometime be, an end to litigation as to the jurisdiction of a Court to clear titles for thousands of distressed homeowners.

In *Stoll v. Gottlieb,* 205 U. S. 165, 83 L. Ed. 104 (1938), the Supreme Court said:

> ". . . a court must have the power to determine whether or not it has jurisdiction of the person of a litigant, or whether its geographical jurisdiction covers the place of the occurrence under consideration. . . . It is just as important that there should be a place to end as that there should be a place to begin litigation. . . ."

In *Treinies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (1940), in affirming this Court of Appeals for the Ninth Circuit, the Supreme Court said:

> "One trial of an issue is enough,. The principles of *res judicata* apply to questions of jurisdiction as as well as to other issues, AS WELL TO JURISDICTION OF THE SUBJECT MATTERS AS OF THE PARTIES." (Emphasis added.)

Many prior decisions of the Supreme and other Courts are quoted as authority for this statement. See also:

American Surety Co. v. Baldwin, 287 U. S. 156, 77 L. Ed. 231 (1932);

Baldwin v. Iowa Traveling Men, etc., 283 U. S. 522, 75 L. Ed. 1244 (1931).

A United States District Court, making an order in interpleader requiring adverse claimants to litigate their claims as to funds or property deposited in the Registry of that Court, thereby relieves and discharges from further liability all those who have paid or delivered money or property into the Court for eventual payment to the winning litigant.

Title Insurance Companies throughout Southern California, have relied upon this interpleader jurisdiction of the Court below and insured the validity of titles thus quieted and cleared by such final judgments of the Court.

Homeowners have relied upon such interpleader jurisdiction of the Court below and have paid into the Registry of the Court, or to the appellee Long Beach Association in whom the Court quieted title, millions of dollars of notes and deeds of trust, the subject of conflicting claims and disputes in this litigation.

Innocent purchasers have acquired the titles of such homeowners in reliance upon the final judgments in interpleader of the Court below.

Real estate values have increased tremendously since the first interpleaders in the early stages of this litigation. Many properties have been sold at greatly advanced values and many loans have been made by innocent lenders and financial institutions upon the homes of the borrowers thus cleared by the final judgments of the Court below.

Denial of jurisdiction of the Court will undo everything accomplished in the clearing of such titles. It will undermine public confidence, not only in the appellee Long Beach Association, but in all federal institutions, and particularly in the federal judicial system. A borrower, who has cleared title to his home by judgment of a Federal Court,

final for several years, upon finding himself again plunged into litigation which has already continued for five years and been the subject of fifteen Court proceedings would be particularly terrified. Especially is this true as to borrowers of modest means as are the majority of the homeowners here involved.

The record discloses [R. 8423-8518 also 8288-8292] that most of the thousands of loans were for from $3,000.00 to $7,000.00 in amount.

An individual homeowner who has already paid attorneys' fees in 1946 or 1947 to clear the title entanglements caused by seizures of Federal Home Loan Banks and Federal Savings and Loan Associations, has a right to rely on the finality of such judgment discharging him from such litigation and to rely upon the rule of *res judicata,* that the titles thus quieted were finally and permanently settled as to this litigation. Appellants, in 1948, dismissed their prior appeals to this Honorable Court of Appeals. During 1946, 1947 and 1948, they allowed other similar judgments to become final by reason of the expiration of time for appeal therefrom.

Appellants' resolution, filed in January, 1948, with the District Court, removing Appellant Ammann as conservator, resulted in a final judgment which quieted the Association's title against appellant Ammann. [R. 3404.] Those dealing with the Association subsequent to that time, relied upon the finality of that judgment caused by appellees' own act.

Federal Court judgments, final for years, should not be subject to nullification at the whim of the defendants against whom the judgments were entered.

The expenses of this litigation, removed from the borrowers' homes by orders of the Court below in 1946, 1947 and 1948, should not again become a crushing burden upon such homes and titles because appellants have become dissatisfied with the judgments from which they took no appeal within the time allowed by law.

If jurisdiction in the Court below be denied after five years of litigation, this appellee must either await the filing of individual quiet title actions by each of the thousands of borrowers separately, or as trustee, this appellee must itself institute such actions in whatever Courts may appear to have the jurisdiction thus denied to the Federal Court within whose district the real property involved is physically located.

The insurability of titles obtained through such new litigation, prior to final judgment, is highly improbable. Title Insurance companies, who have insured title based upon final judgments of a Federal Court, upon finding five years later that they must pay on the policies because of their belief in the finality of such judgments, would be most unlikely to insure new proceedings in any other Court. They certainly would not insure judgments against administrative officials if those officials are to have the power to vacate such judgments at will, upon the calling of an Administrative Hearing.

II.

The Preliminary Injunction Protected the Judgments of the District Court Quieting Title.

Appellants by ordering cause to be shown why a receiver should not be appointed to liquidate appellee Long Beach Federal Savings and Loan Association, set up proceedings to cancel the judgments of the Court, which required deposit of millions of dollars in the Registry of the Court in interpleader. Withdrawal by such receiver of such money, would nullify removal of the claims by the earlier quiet title judgments from the thousands of homes and placed upon the assets in Court. Power of the Court to issue a Preliminary Injunction to prevent interference with a party in whom the Court had quieted title, is upheld by the following cases:

> *Dugas v. American Surety Co.,* 300 U. S. 414, 81 L. Ed. 720 (1936).

In describing an injunction to prevent further litigation in other Courts, the Supreme Court said:

> "The power of the court to enjoin . . . has full support in . . . the Interpleader Act . . . as also in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees." (Referring to many other cases.)

In *City of Orangeburg v. Southern Railroad Co.,* 134 F. 2d 890 (C. C. A. 4, 1943), the Court said:

> ". . . the court . . . may enjoin the parties from proceeding in any other court when the effect of the action therein would be to defeat or to impair its own jurisdiction. . . ."

In *Julian v. Central Trust Company,* 193 U. S. 93, 48 L. Ed. 629 (1904), it was said:

> ". . . where the Federal court acts in aid of its own jurisdiction and to render its decree effectual, it may . . . restrain all proceedings, . . .which would have the effect of defeating or impairing its jurisdiction. . . ."

The Court below, in its final judgments, expressly reserved authority to make further orders to protect the titles it quieted in the homeowners. The Preliminary Injunction in this appeal, was an order made under such reserved jurisdiction.

This appellee has continued to reconvey during the pendency of the present appeals, in reliance upon the finality of the judgments quieting title in the Court below, particularly relying upon denial or writs of prohibition in 1947 by the U. S. Supreme Court and in June of 1950, by this Honorable Court of Appeals. Reconveyances in reliance upon such final judgments quieting title are being insured by reputable title companies, notwithstanding the present appeals.

This appellee is informed that such continuing title insurance is based upon the deposit in the Registry of the Court of the approximately $14,000,000.00 in assets which have been in such Registry for approximately three years since 1948. Withdrawal of such deposit from the Registry of the Court prior to final decision would render the titles uninsurable again.

None of the ten prior and present appeals and writs have resulted in any appellate Court ruling, questioning the jurisdiction of the Court below *in rem* over the assets in its Registry or over the real property physically within its territorial jurisdiction.

Such continuing reconveyances are substantial in number and average several hundred per year. Appellee is informed other trustees are likewise reconveying in reliance upon such final judgments quieting title and the title insurance issued thereupon by reputable title insurance companies.

This appellee urgently presses upon the attention of this Honorable Court of Appeals, the disastrous consequences which would immediately fall upon the innocent homeowners and borrowers if jurisdiction of the Court below to make such final judgments quieting title be voided or vacated, years after the time for appeal from such judgments has expired.

If jurisdiction of the Court below be denied, thousands of such reconveyances, issued by this appellee in reliance upon final judgments of the Court below, quieting appellee Long Beach Association's title in such notes and deeds of trust, would be voided. The titles thus cleared by such reconveyances and final judgments would by such denial of jurisdiction, again be clouded. Further, if jurisdiction of the Court below be denied, this appellee will face several thousand separate actions by individual borrowers seeking determination of which of all the litigant claimants, can safely be paid.

Payment to any one claimant to the exclusion of the other claimants, cannnot be expected to result in an effective discharge. The parties defendant to the several thousand resulting quiet title actions, will be the same parties who have been litigants before this Court for approximately five years.

This appellee is unable to find any benefit resulting to the public welfare from re-clouding the titles of the inno-

cent homeowners and spreading this litigation into several thousand separate lawsuits.

By the express terms of the various deeds of trust, the expenses of such litigation and the attorneys' fees of this appellee, and all counsel for claimants, beneficiaries under said deeds of trust, will fall upon the homes of the innocent borrowers.

Pursuant to orders made by the District Court following successive interventions and deposits in Court, during the first two years of this litigation, all of which orders have become final, the obligation for such litigation expenses, including attorneys' fees, **was transferred from the homes of the borrowers to the money deposited in the Registry of the Court.**

The voiding of these orders on the ground of lack of jurisdiction of the Court below, would appear to cause the very substantial litigation expenses already accrued, estimated at from $300,000.00 to $500,000.00 and the enormous expenses which would result from several thousand additional Court proceedings, to again fall upon the homes of the borrowers, from which homes such expenses have been removed by judgments of the Court below, final for several years.

Interpleader jurisdiction was designed to prevent exactly such multiplicity and duplication of litigation and proceedings.

This appellee, through its officers and attorneys, has had direct personal contact with many of the distressed homeowners. Appellees' original attorney, H. O. Wallace, died in Washington, D. C., in 1948, during strenuous efforts to clear the titles to thousands of homes, clouded by the appellants' seizures.

The distress of the homeowner who pays in full to a federal official and then discovers he has not obtained a clear title, is pitiful. When, however, the homeowner discovers that the federal official knew, when he took payment in full, that the title would remain clouded notwithstanding such payment, the distress of the homeowner changes to a sense of outrage against his own Government.

Washington officials have become calloused to the deprivation imposed upon salaried or working persons required to employ and pay their own separate attorneys to participate in litigation as expensive and protracted as that disclosed by this 11,500 page printed record.

Many homeowners, unable to afford separate counsel, waited through the twenty months before the removal of appellant Ammann as conservator, and only obtained a clear title to their homes upon the mass interpleader of some $14,000,000.00 *by the Association* within a few weeks after it was restored.

The District Court utilized the interpleader jurisdiction first invoked by this appellee, Title Service Company, and by such jurisdiction, succeeded in lifting this burden from the homeowners. It should not again be allowed to fall upon and crush them.

Some borrowers entangled in other machinations of appellants which caused a snarl of liens, judgments, attachments, executions, and other process, are yet awaiting relief from the Court below because the matter of their individual transactions was not disclosed in the records of appellant Ammann as conservator, and they were therefore omitted from the mass interpleader which referred by individual legal descriptions to each of the separate

parcels of property to which title was cleared. Such descriptions cover 95 printed pages [8423 to 8518] of the printed record.

The omnibus clauses clearing titles not therein specifically described, was insufficient to clear some of these particularly tangled matters.

The Federal Court, within whose territory the real property is situated, and within whose registry the $14,000.000.00 in assets are on deposit, is the Court specifically authorized by Acts of Congress to have jurisdiction in interpleader, whose process extends, as was said in *Treinies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (1940), "at least throughout all the states."

If the District Court is held, three years after its judgments become final, to have been without jurisdiction to clear the titles tangled by the five year old seizures of the Los Angeles Bank and the Long Beach Association and the two years of appellants' assignments and dealings with the seized assets, it is extremely unlikely that any State Court can ever effectively exercise remedial jurisdiction. Certainly, marketable, insurable titles, cannot result for many years.

This appellee is confident that these dire results will not occur, but this appellee, during the course of this litigation, witnessed the issuance of a few policies of title insurance which purported to insure the borrowers of the non-existence of deeds of trust which yet remained of record, unreconveyed on the records of the County Recorder's office. Said title insurance also failed to disclose the pendency of this litigation. The borrowers, thus deceived, were quickly in the Court below when they discovered the unmarketability of their titles. The title

insurance company, so insuring, issued only a few (about four) such policies and was itself made a defendant in the litigation.

The exact "arrangements" of appellants by which title insurance was procured showing titles as clear from a deed of trust unreconveyed of record, and showing the property as clear of the *lis pendens* specifically describing that property and referring to this pending litigation, is one of the subjects which will be thoroughly inquired into, on the trial on the merits in the Court below.

III.

The Enjoined Administrative Hearing Would Have Interfered With Jurisdiction and Final Judgments of the District Court.

Every trustee under a deed of trust, as used in California, is trustee both for the borrower and for the lender. The borrower conveys legal title to his real estate to the trustee in trust, such legal title to be returned to the borrower if and when the loan is paid in full. If the borrower defaults, the trustee by appropriate sale proceedings, conveys the legal title to, or for the benefit of, the lender. The trustee, when asked to reconvey, has the legal duty of determining that the request for reconveyance is made by undisputed owner of the loan.

In the present case, appellee Title Service Company, is such trustee on several thousand deeds of trust for approximately 8,000 borrowers and is likewise trustee for whomever the Court decides is to receive the $12,000,000.00 in loans secured by such deeds of trust.

Confronted with the conflicting claims of these litigants, Title Service Company, as such trustee, interplead

such title into the Court. This interpleader resulted in final judgments and reconveyances based thereon, which effectively cleared the homeowners' titles. By such judgments, the claims of the litigation were transferred from the deeds of trust and the titles of the homes, to the money and assets deposited in the Registry of the Court.

Acting upon such final judgments of the Federal Court, appellee Title Service Company, as trustee, was, every month, reconveying numerous titles (totalling several hundred a year). Appellants, years after such judgments quieting title became final, issued their Order No. 2015, requiring that the appellee Long Beach Association [R. 8242]:

> ". . . appear at a hearing, as hereinafter provided, and show cause, if any it have, why the Home Loan Bank Board, should not . . . enter its order . . . for the appointment of the Federal Savings and Loan Insurance Corporation as receiver for said Association; . . ."
>
> ". . . And It Is Further Ordered that any person, partnership, association, or corporation claiming to have an interest in the subject matter involved may, at any time before the closing of the hearing, file with the Presiding Officer a petition for leave to intervene at said hearing. . . ."

Appellee Title Service Company, as appellants well know, claimed to have an interest in the subject matter involved. Its interest was that of trustee on $12,000,000.00 of deeds of trust, interplead into the custody of the Court.

Appointment of a receiver would remove the title and ownership from appellee Long Beach Association in whom it had been quieted by the Court below and transfer it to

appellant Federal Savings and Loan Insurance Corporation and Home Loan Bank Board, against whom the Court below had quieted such title.

Appellee Title Service Company, as trustee for the 8,000 homeowner borrowers, and for the lenders, had the choice of either defaulting such hearing or of applying to appellants for leave to intervene. If it defaulted the hearing, appellants would appoint themselves as receiver to take from appellee Long Beach Association the titles which the Federal Court had quieted in such Association and thereby immediately *create a conflict between the orders of the Home Loan Bank Board and the judgments of the Federal Court.* If on the other hand, appellee Title Service Company applied to appellants for leave to intervene, and if appellants granted such petition for intervention, appellee Title Service Company would then appear before appellants and submit to them the questions of how appellee Title Service Company was to discharge its duties as trustee. These questions, appellee Title Service Company had previously submitted to the Federal Court in June of 1946, and had in 1946, 1947 and 1948 received final judgments, instructing it as to reconveyances and further disposition of the titles thus interplead into the Federal Court.

A *lis pendens* had been recorded in 1946 notifying the world that the trustee under the deeds of trust had conveyed such title to the Federal Court for instructions and directions.

If appellee Title Service Company as trustee, defaulted the Administrative Hearing, it could be held liable by the borrowers for a breach of its trustee duties in permitting the titles to their homes to again be clouded by the de-

feated litigants against whom the Federal Court had quieted such title.

If it took the other alternative and appeared before appellants Home Loan Bank Board and submitted to appellants (for their own decision) the issues 3½ years previously submitted to the Federal Court for decision, it could do so only by attempting to withdraw from the Federal Court and submit to defendants for their own decision, issues already decided, or yet to be decided by such Federal Court, **but only by an order of the Federal Court authorizing such withdrawal of issues, could the legal title to the thousands of homes be validly conveyed.**

The Court found [R. 8268]:

> "53. That the proposed order for hearing, if given its face effect, is an attempted withdrawal by one of the parties to this litigation, from this court, of many of, if not the major issues involved, and an effort to act upon those issues in its own behalf, without regard to the jurisdiction of this Court or the contentions of the many parties to this litigation who are not parties to such order."
>
> [R. 8269.] "55. That the proceedings ordered by said Home Loan Bank Board Order No. 2015, if permitted to be held as threatened, threatens to result in the appointment of the members of said Board, in their capacity as managing trustees of defendant Federal Savings and Loan Insurance Corporation, a receiver, for their adversary cross-claimant Long Beach Federal Savings and Loan Association, in which event a question would, or may, arise as to whether or not a party to this litigation would thereby have made, or attempted to make, decision and dis-

position of the ownership, title, possession and control of, some or all of said assets, aggregating approximately $14,000,000.00 interplead into the Registry of this Court as aforesaid, as well as some or all of the other issues involved in this litigation, without regard to the jurisdiction of this Court or the rights of the many parties litigant herein."

[R. 8271.] "57. That the hearings ordered by said Home Loan Bank Board's Order No. 2015, interfere with the jurisdiction of this Court and would constitute a duplication of actions and a multiplicity of suits, hearings and proceedings for the decision, hearing and determination of questions, issues and controversies, previously presented to, and either previously decided, or now pending for decision and determination before this Court, in the said cases and matters above captioned. That a multiplicity and duplication of proceedings, suits, hearings and litigation, would cause great, irreparable, immediate and continuing loss, injury and damage, to the parties litigant in these actions now pending before this Court."

[R. 8263.] "47. That the said Home Loan Bank Board Order No. 2015 (see Footnote No. 11) threatens, by all of the charges therein contained in numbers 1 to 3 inclusive (and by number 4 inclusive, insofar as any reference is made to alleged violations set out in the so-called 'More Definite Statement' submitted to said Association on May 29, 1946) to impose upon, interfere with and supplant the jurisdiction of this Court to determine some or all of the main issues in the entire litigation, as well as some or all of the hereinbefore mentioned preliminary issues. That all of said matters and things herein referred to, are inextricably involved in some or all of the numerous matters and things which are pres-

ently pending before this Court, and which are either now directly or indirectly in issue between some or all of the multitudinous parties to this litigation, or have been in issue in some or all of the numerous matters, motions and proceedings heretofore had, upon which final appealable orders have been made by this Court, and as to many of which, the time for appeal has long expired, and as to one of which orders, an appeal was taken and dismissed, and from another group of said orders, an appeal was taken and dismissed. . . ."

Only the Federal Court can make valid adjudications of title. No act of appellant Home Loan Bank Board, whether an Administrative Hearing or otherwise, can, unless the Federal Court concurs in the action, effectively transfer titles quieted by Federal Court judgment in one of the litigants. However, any such order appointing a receiver or otherwise affecting the titles, does create a conflict between the orders of appellants Home Loan Bank Board, a defeated litigant and the final judgments of the Federal Court in which that litigant was defeated. Such conflict casts a cloud upon the titles involved.

Appellee Title Service Company, as trustee for the thousands of homeowners, could not stand idly by until the homeowners' titles were again clouded. Having three years previously invoked the interpleader jurisdiction of Federal Courts to prevent multiplicity of actions and vaxatious hearings and trials, appellee Title Service Company's trustee duties required it to prevent at the earliest possible moment, a recurrence of the tribulations of the innocent homeowners whose only fault in this litigation was borrowing money from an Association later seized by appellants and restored by final judgment of the Federal Court.

IV.

The Preliminary Injunction Prevented a Vexatious Multiplicity of Actions and Hearings.

Appellants' Order No. 2015 [R. 8242] by its terms required "any person, partnership, association or corporation, claiming to have an interest in the subject matter involved . . ." to "petition for leave to intervene at said hearing. . . ." Such order, so far as this appellee was able to ascertain, was never published in the Federal Register as required by law. Appellee homeowners would therefore have had no way of knowing of the hearing to be conducted 3,000 miles away in Washington, D. C., and which would vitally affect their rights by again clouding the titles to their homes.

Had this appellee, Title Service Company, petitioned for, and been granted, leave to intervene, at said administrative hearing, it would thereby, without the knowledge or consent, have submitted the questions of the homeowners' rights to the administrative hearing. Such rights had previously been submitted by this appellee in 1946 to the Federal Court at Los Angeles and such submission had resulted in fifty or more separate interventions by distressed homeowners as parties in the litigation in the Federal Court. [R. 8288 to 8293.] Withdrawal from the Federal Court of the issues adjudicated on such fifty interventions was impossible.

Withdrawal from the Federal Court of the issues previously submitted in 1946 was likewise impossible without notice to all of the thousands of homeowners concerned. The mere giving of such a notice of intention to withdraw from the Federal Court and submit to the administrative hearing, issues pending before the Court since 1946 demonstrates its impossibility.

Giving of such notice alone would be sufficient to provoke another run of withdrawals similar to the $10,000,000.00 run which occurred when appellant Ammann first seized the Association in 1946. It is extremely unlikely that any of the homeowners whose titles were already cleared by final judgments of the Federal Court would knowingly consent to the trustee withdrawing the titles to their homes from the Federal Court only to submit them to the administrative hearing before appellants. For a trustee who had invoked the interpleader jurisdiction of a Federal Court to repudiate that Court and its jurisdiction was unthinkable and for such trustee to be threatened with the penalties of a default at the administrative hearing for refusal to withdraw from the Federal Court and its jurisdiction, issues previously decided by final judgments of that Federal Court was a direct contempt of the Court, its jurisdiction and its judgments by those who made such threats.

This appellee, Title Service Company, was trustee not only for the borrowers and the titles to their homes but for the lender the beneficiary entitled to receive the $12,000,000.00 secured by the deeds of trust. Before appellant Ammann seized the Association, the named beneficiary was the appellee Association.

Immediately after the seizure, appellees, Mallonee, *et al.,* the Shareholders Protective Committee, represented the 16,000 depositors, the real owners of the right to receive the $12,000,000.00 due on the trust deeds. The Shareholders Protective Committee, who brought the litigation in 1946, as plaintiffs, *had also moved to enjoin appellants' administrative hearing.* The motion was upon the grounds, among others, of interference with the jurisdiction and judgments of the District Court. Without the consent of the beneficiaries named in the deeds

of trust, this appellee, Title Service Company, would have been liable for any loss resulting had it attempted to withdraw from the Federal Court and submit to appellants Home Loan Bank Board, the issues of the litigation before Federal Court.

This appellee, as a party had obtained previous injunctions issued by the District Court when other parties to the litigation attempted to split the litigation into sections and cause it to be prosecuted simultaneously in several different courts.

In July of 1948, a preliminary injunction was issued preventing appellants San Francisco Bank and its officers and directors from litigating in the Northern District Court at San Francisco the issues which had then been proceeding for more than two years before the Los Angeles District Court.

Another similar preliminary injunction was issued February 2, 1949, to prevent the litigation in the California State Superior Court of issues which had been then proceeding for nearly three years before the District Court at Los Angeles.

No appeal had ever been taken from either of these preliminary injunctions. None of the parties to the litigation who had recovered judgments in the District Court would voluntarily submit to the simultaneous litigation of the remaining issues before appellants so-called "administrative hearing" 3,000 miles distant.

The hearing before appellants was objectionable not only as a multiplicity and duplication of actions and proceedings, but particularly as an attempt by one litigant to try his own case in his own Court before himself. Such efforts usually result from those swollen with the abuse of power. At page 311 of Senate Document 248,

79th Congress, Legislative History, Administrative Procedure Act, Honorable Pat McCarran, Chairman of the Senate Judiciary Committee, says:

> "Mr. McCarran. Mr. President, let me say, in answer to the able Senator that the thought uppermost in presenting this bill is that where an agency without authority or by caprice makes a decision, then it is subject to review."

and on page 351, as part of the report of Honorable Francis E. Walter, Chairman of Subcommittee No. 3, Committee on the Judiciary of the House of Representatives of said Senate Document No. 248, is stated:

> ". . . On the eve of the American Revolution the great Pitt warned that 'unlimited power corrupts the possessor.' Our Declaration of Independence, which followed a few years later, charged that the British King had 'sent hither swarms of officers to harass our people," sponsored 'arbitrary government,' sought to introduce 'absolute rule into these Colonies,' and proposed to alter 'fundamentally the forms of our governments.' Those were the words of Thomas Jefferson, used to describe the administrative tyranny of the time."

Sometimes, it is a labor leader who refuses to abide by a judgment of the Court. Such an instance was

> *U. S. A. v. United Mine Workers, John L. Lewis, et al.,* 330 U. S. 258, 91 L. Ed. 884 (1947).

In the opinion, Justice Frankfurter at page 307 of U. S. said:

> "The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He

was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. . . . So strongly were the framers of the Constitution bent on securing a reign of law that they endowed the judicial office with extraordinary safeguards and prestige. No one, no matter how exalted his public office or how righteous his private motive, can be judged in his own case. That is what courts are for. And no type of controversy is more peculiarly fit for judicial determination than a controversy that calls into question the power of a court to decide. Controversies over 'jurisdiction' are apt to raise difficult technical problems. They usually involve judicial presuppositions, textual doubts, confused legislative history, and like factors hardly fit for final determination by the self-interest of a party.

". . . Whether a defendant may be brought to the bar of justice is not for the defendant himself to decide. . . .

". . . The most prized liberties themselves presuppose an independent judiciary through which these liberties may be, as they often have been, vindicated. When in a real controversy, such is is now here, an appeal is made to law, the issue must be left to the judgment of courts and not the personal judgment of one of the parties. This principle is a postulate of our democracy. . . .

". . . There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself

> what is law, every man can. That means first chaos, then tyranny. . . . **The greater the power that defies law the less tolerant can this Court be of defiance.** . . ."

Appellants Home Loan Bank Board ignore the language of this opinion. They seek to act as a Court of Appeals and reverse and set aside final judgments of the District Court *against* themselves.

Title Service Company is a California corporation. Whatever may be the obligations of federal savings and loan associations or federal home loan banks, there can be no requirement that Title Service Company, a California corporation, trustee, holding as trustee, title to several thousand California homes must withdraw such title from the Federal Court into which the title had been interplead, and at the demand of appellant Home Loan Bank Board, submit the issues of the litigation as to such titles to appellant Home Loan Bank Board at Washington, D. C., 3,000 miles distant, for the Home Loan Bank Board's decision in favor of itself.

Appellant Home Loan Bank Board has no authority to issue summons, order to show cause, or other process compelling this appellee Title Service Company to submit its trustee duties and obligations to the Home Loan Bank Board for decision.

Appellant Home Loan Bank Board by threats to decide the litigation against appellee Title Service Company, unless this appellee intervenes, deprive the Federal Court of its jurisdiction, and thereby deprive this appellee Title Service Company of its constitutional rights to a fair trial by an impartial tribunal.

The whole nation would be horrified and scandalized if a federal judge personally a defendant in damage claims

totaling $20,000,000.00, summoned the plaintiffs to a trial before such judge to decide such damage claims. Yet, that is exactly what appellants Home Loan Bank Board have done by their order for "administrative hearing," and exactly what they will do if they succeed in reversing the preliminary injunction which is the only obstacle presently preventing them from trying their own case before themselves.

If the federal judge, in our imaginary case, not only summoned the plaintiffs to submit to him for decision their $20,000,000.00 damage claims against such judge personally, but also announced he was about to appoint himself receiver to prosecute the damage claims against himself, we would have the exact parallel of what the Home Loan Bank Board has been enjoined from doing by the preliminary injunction, which they ask this Court of Appeals to reverse.

The high standards of impartiality required from judges have equal application to tribunals exercising the power of courts. The appointment of a receiver is the exercise of the judicial function. Abuses such as those enjoined are exactly what brought about the remedial legislation known as the Administrative Procedure Act. The preliminary injunction subject to this appeal was specifically authorized by the precise terms of such act. Section 10(d) (1009 U. S. C. A. Title 25).

This appellee Title Service Company, as trustee for the thousands of homeowners, believes that its trustee duty required submitting the vital issue of the titles of such homeowners only to an independent and impartial Federal Court, and that its trustee duties prevented any of the litigants withdrawal of the issues from the Federal Court for decisions by one of the litigants at a hearing before themselves.

The only result that such hearing could achieve is a conflict between the orders of appellant Home Loan Bank Board and the judgments of the Federal Court, to the immediate and irreparable damage of the homeowners whose titles were thus clouded.

CONCLUSION.

The preliminary injunction should be affirmed. The District Court was authorized under its interpleader jurisdiction and otherwise to protect the parties who had received its final judgments quieting their title. Thousands of homeowners in Southern California should not be required to travel 3,000 miles to Washington, D. C., to submit to a multiplicity and duplication of hearings on issues for several years submitted to and partially decided by the District Court.

Coercion by threats of default against parties whose titles are protected by final judgments of the Federal Court can be prevented by a preliminary injunction.

The preliminary injunction should be affirmed and appellants remanded to apply to the District Court for the relief which they seek to grant themselves at their own hearing.

Respectfully submitted,

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